



# COURT OF APPEALS

## Media Release

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**CONTACT:**

Julie Smith  
(503) 986-5634

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The Court of Appeals issued these opinions:

State of Oregon v. Eric Lawrence Kreis  
(A157224 - Beaverton Municipal Court)  
State of Oregon v. Jason Travis Jerscheid  
(A164727 - Douglas County Circuit Court)  
State of Oregon v. Joshua Anthony Dallavis  
(A160338 - Lane County Circuit Court)  
Laurie Kim Maldonado and Perry Lee Freed  
(A163430 - Lincoln County Circuit Court)  
State of Oregon v. Autumn Chantelkay Middleton  
(A163039 - Washington County Circuit Court)  
Department of Human Services v. C. A. M.  
(A167074 - Lane County Circuit Court)  
State of Oregon v. Leon Erwin Wendt  
(A161467 - Linn County Circuit Court)  
Daniel Harshbarger v. Klamath County, Oregon  
(A163379 - Klamath County Circuit Court)  
State of Oregon v. Jeremiah Leach  
(A162658 - Jefferson County Circuit Court)

The Court of Appeals issued these *per curiam* opinions:

State of Oregon v. Jonathan David Smoot  
(A162884 - Washington County Circuit Court)  
Marina Donohue v. Daniel Hathaway  
(A166246 - Multnomah County Circuit Court)  
State of Oregon v. L. A. B.  
(A167545 - Josephine County Circuit Court)

The Court of Appeals affirmed these cases without opinion:

State of Oregon v. J. M. C.  
(A161368 - Lane County Circuit Court)

State of Oregon v. Arturo Guerrero-Perez  
(A164095 - Washington County Circuit Court)

State of Oregon v. Levi Carey Sutphin  
(A164111 - Coos County Circuit Court)

State of Oregon v. C. A. B.  
(A164177 - Coos County Circuit Court)

State of Oregon v. Adeladilew Aragie Mekonen  
(A164454 - Washington County Circuit Court)

Randy Vincent Moore v. State of Oregon  
(A164517 - Marion County Circuit Court)

State of Oregon v. Daniel Arian Pole  
(A164580 - Jackson County Circuit Court)

State of Oregon v. Adrian Alvarez, Jr.  
(A164646 - Washington County Circuit Court)

State of Oregon v. Brian Don Campbell  
(A164679 - Marion County Circuit Court)

Dorothy Cofield v. Terry Calcagno  
(A164684 - Multnomah County Circuit Court)

State of Oregon v. Dawn Raelene Kirksey  
(A164847 - Josephine County Circuit Court)

State of Oregon v. Germain Longoria Sagaste  
(A164876 - Clackamas County Circuit Court)

State of Oregon v. Anatoliy Anatolyvi Arshilovich  
(A164937 - Marion County Circuit Court)

State of Oregon v. Bobbi Jo Smith  
(A164939 - Washington County Circuit Court)

State of Oregon v. Kalan Jauron Kince  
(A165253 - Multnomah County Circuit Court)

State of Oregon v. Jonathan David White  
(A165277 - Linn County Circuit Court)

State of Oregon v. Paarth Nilesh Patel  
(A165423 - Lane County Circuit Court)

State of Oregon v. Cortny Ann Libbett  
(A165553 - Coos County Circuit Court)

State of Oregon v. P. J. G.  
(A165906 - Umatilla County Circuit Court)

Leumal Fred Hentz v. Colette S. Peters  
(A166030 - Marion County Circuit Court)

Korry Allen Weedmark v. Brandon Kelly  
(A166402 - Marion County Circuit Court)

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**State of Oregon v. Eric Lawrence Kreis**

(Egan, C. J.)

Defendant appeals a judgment of conviction after a jury found him guilty of interfering with a peace officer by refusing to obey a lawful order, assigning error to the trial court's denial of his motion for judgment of acquittal. Defendant contends that the officer's order for defendant to turn around and to put his hands behind his back was not lawful, because it was a warrantless seizure in violation of Article I, section 9, of the Oregon Constitution. Defendant also challenges the imposition of an award of attorney fees for court-appointed counsel on the offense of resisting arrest, of which defendant was acquitted. Held: The peace officer's order was lawful as an order based on officer safety concerns and was not a warrantless seizure of defendant. The trial court therefore did not err in denying defendant's motion for judgment of acquittal on the interfering charge. The statutes that authorize an assessment of attorney fees for court-appointed counsel do not limit the assessment to attorney fees related to the charges on which the defendant was convicted. The trial court therefore did not err in assessing defendant for attorney fees incurred on the resisting arrest charge for which defendant had been acquitted. Affirmed.

**State of Oregon v. Jason Travis Jerscheid**

(Armstrong, P. J.)

Defendant appeals a judgment of conviction for unlawful possession of four or more ounces of marijuana and felon in possession of a firearm (FIP), challenging the trial court's imposition of special probation conditions on his FIP conviction that restrict his ability to participate in the Oregon Medical Marijuana Program (OMMP). Defendant contends--and the state concedes--that those conditions violate ORS 137.542. Held: ORS 137.542 applies whenever a person holding a registry identification card for the OMMP is sentenced to probation; it is not limited to probation sentences for marijuana-related offenses. The trial court erred in concluding otherwise. Remanded for resentencing; otherwise affirmed.

**State of Oregon v. Joshua Anthony Dallavis**

(Tookey, J.)

Defendant appeals a judgment of conviction for furnishing alcohol to a person under 21 years of age (Count 1) and first-degree rape (Count 2). Defendant argues that the "trial court erred when it permitted defendant to be tried on the indictment to which it had allowed a demurrer." Defendant also argues that the "trial court erred when it denied defendant's eligibility for sentence modification programs on Count 2." Held: Defendant failed to preserve his first argument, because he did not object to being tried on the indictment after the trial court allowed his demurrer only as to Count 4. Additionally, because defendant indicated his willingness to be tried on the remaining charges in the indictment, he invited any error. As to defendant's second argument, the trial court erred when it denied defendant's eligibility for sentence modification programs for the entire period of defendant's sentence on Count 2. Remanded for resentencing; otherwise affirmed.

**Laurie Kim Maldonado and Perry Lee Freed**

(Tookey, J.)

Husband appeals from a judgment dissolving the parties' marriage, contending that the trial court erred in its award of spousal support and division of marital property. Husband contends that, in determining the just and

proper division of the marital property and wife's equalizing judgment, the court committed legal error in failing to honor the parties' intentions to keep their property separate, and in failing to properly account for the parties' separate contributions to the acquisition of marital assets and premarital assets. Held: The Court of Appeals rejected without discussion husband's contentions relating to spousal support. But the Court of Appeals concluded that the trial court committed reversible error in determining a just and proper division of marital property for the purpose of determining wife's equalizing judgment. Specifically, the trial court erred in failing to value bank accounts as of the date of dissolution, and in determining that husband had not rebutted the presumption of equal contribution with respect to his separate funds used to purchase the "8th Court" house. The Court of Appeals remanded the case for reconsideration of the property division. Reversed and remanded for reconsideration of property division; otherwise affirmed.

**State of Oregon v. Autumn Chantelkay Middleton**  
(Garrett, J.)

Defendant appeals a judgment of conviction for possession of heroin, ORS 875.854, and possession of methamphetamine, ORS 475.894, assigning error to the trial court's denial of her motion to suppress evidence obtained after she was stopped for a traffic violation. During the stop, defendant failed to present a valid driver's license in violation of ORS 807.570(1). On appeal, defendant argues that the police unlawfully questioned her about drugs after obtaining all the information needed to cite and release her under ORS 807.570, and, thus, the evidence was discovered during an unlawful extension of the stop. Held: The trial court erred in denying defendant's motion. Defendant's stop was unlawfully extended in violation of Article I, section 9, of the Oregon Constitution when the officers failed to release her after they verified her identity. Reversed and remanded.

**Department of Human Services v. C. A. M.**  
(Garrett, J.)

Mother appeals a judgment of the juvenile court assuming jurisdiction over her infant son, M. The court assumed jurisdiction after M's twin sister, C, died of undetermined causes while sleeping with father and after evidence surfaced that father had likely caused nonaccidental injuries to C before her death. Mother challenges the jurisdictional judgment on the grounds that (1) the record does not support the juvenile court's finding that mother "knew or should have known" about the risk that father posed to M and C, and (2) that the evidence in the record is not legally sufficient to permit the court's ultimate determination that a nonspeculative risk of harm to M continued to exist under mother's care. DHS argues that the case is moot, and, alternatively, that the judgment should be affirmed on the merits. Held: The case is not moot, and the juvenile court did not err in asserting jurisdiction over M. There was evidence in the record that mother knew or should have known that father posed a risk to the children, and the evidence in the record was legally sufficient to permit the juvenile court to determine that a nonspeculative risk of harm to M existed under mother's care. Affirmed.

**State of Oregon v. Leon Erwin Wendt**  
(Shorr, J.)

Defendant appeals from a judgment of conviction for manslaughter in the second degree and two counts of assault in the fourth degree. Defendant assigns error to the trial court's determination that a witness, who was a registered nurse, was qualified to give expert opinion testimony that people should not consume alcohol while taking antiseizure medication. Held: The trial court erred. There was insufficient evidence in the record to establish that the witness had the knowledge, skill, experience, training, or education to form a basis for specialized knowledge about whether people may safely consume alcohol when taking an antiseizure

medication, and thus, she was not qualified to give expert opinion testimony on that topic. Reversed and remanded on Counts 1, 2, and 3; otherwise affirmed.

**Daniel Harshbarger v. Klamath County, Oregon**  
(Shorr, J.)

Klamath County appeals from a general judgment awarding damages and a supplemental judgment awarding prevailing-party fees and costs to plaintiff, a residential landowner in Klamath County, for damage to ornamental trees on plaintiff's property caused by the county. Plaintiff sued for negligence, ORS 105.505, and timber trespass, ORS 105.815. With respect to the latter claim, plaintiff alleged that he was damaged by losing trees and incurring the cost of tree removal and reforestation. On multiple occasions before and during trial, the county sought dismissal of plaintiff's timber trespass claim, arguing that plaintiff did not suffer damages in the manner required by the timber trespass statute and the case law interpreting the statute, viz., plaintiff did not allege or present evidence that the market value of his land was affected by the damage to his trees. The county, by contrast, presented evidence that the market value of plaintiff's land was undiminished. The county moved for a directed verdict on that basis. The trial court denied the motion. On appeal, the county assigns error to that ruling. Held: The trial court erred. A plaintiff cannot prevail on a timber trespass claim involving damage to noncommercial ornamental trees in the absence of proof that the trespass diminished the market value of plaintiff's property, unless there is sufficient evidence that the effect on market value cannot be determined. Plaintiff also was not entitled to statutory fees and costs, because he should not have prevailed on his timber trespass claim below. General judgment on claim for timber trespass reversed; otherwise affirmed. Supplemental judgment vacated and remanded.

**State of Oregon v. Jeremiah Leach**  
(Powers, J.)

Defendant appeals from a judgment of conviction for unlawful manufacture of methamphetamine within 1,000 feet of a school, ORS 475.888, and unlawful possession of methamphetamine, ORS 475.894, assigning error to the trial court's denial of his motion to suppress evidence obtained as a result of an officer's warrantless search of defendant's pocket. Defendant argues that the trial court erred when it concluded that the intrusion into his pocket was justified by the officer safety exception. Held: The trial court erred in determining that the search of defendant's pocket was justified by the officer's reasonable suspicion, based on specific and articulable facts, that defendant might pose an immediate threat of serious physical injury. The officer did not articulate why, after a patdown, an intrusion into defendant's pocket was objectively reasonable under the circumstances. Reversed and remanded.

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